

Service Date: May 13, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of The Staff Audit)	UTILITY DIVISION
of PacifiCorp, an Oregon)	
corporation.)	ORDER NO. 5612a

AMENDED PROTECTIVE ORDER

INTRODUCTION

On March 19, 1992 the Montana Public Service Commission ("Commission") issued Protective Order, Order No. 5612, to cover information received from PacifiCorp (Pacific Power & Light or PP&L) in response to audit requests related to installation of Fiber Optic Ground Wire ("FOG Wire") in PP&L's Southern Oregon and Northern California service areas. Order No. 5612 protects this specific FOG Wire information submitted for "purposes of this proceeding," i.e., the audit of PacifiCorp.

Montana Consumer Counsel (MCC) filed its Motion to Amend Protective Order (No. 5612) on May 4, 1992. MCC believes that the responses to staff audit requests to PP&L are relevant or could relate to the ratemaking treatment of MPC's FOG Wire transaction in Docket No. 90.6.39. MCC proposes that the Commission amend Order No. 5612 to enlarge references to "this proceeding" throughout the Order to include the proceeding in Docket No.90.6.39. PP&L and MCI were informed and have no objections according to MCC. Both were served copies of the Motion.

MCC submitted an Appendix A to its Motion. Appendix A would modify pages 3, 4, 7, 10 and 11 of Order No. 5612 to allow greater flexibility in use of trade secret information, including possible use in Docket No. 90.6.39 while still affording protection.

ORDER GRANTING MOTION TO AMEND

NOW THEREFORE IT IS ORDERED that MCC's Motion to Amend Protective Order is granted. The Commission issues this Order amending the provisions of Protective Order No. 5612 as modified in Appendix A of MCC's Motion to Amend Protective Order. These modifications to pages 3, 4, 7, 10 and 11 of Order No. 5612 shall become the pertinent provisions of this Order as it amends Order No. 5612. Otherwise, this Order is incorporated into Order No. 5612 and all the protective provisions and requirements therein have full force and effect.

MCC's Motion related to possible use of this protected information in Docket No. 90.6.39. MPC and any proper intervening parties which have filed Notice of Intervention in the Reserved Issues, pursuant to Procedural Order No. 5484t in Docket No. 90.6.39, may sign an Exhibit A (as attached) and obtain the protected information pursuant to the terms of Order Nos. 5612 and 5612a. Previous execution of an Exhibit "A" to Order No. 5612 will suffice as an Exhibit "A" to Order No. 5612a, since the Orders contain the same terms and are one and the same Order, except that Order No. 5612a expands possible use of the Confidential Information. Nothing in this Amended Protective Order prevents MPC from challenging the use of this protected information pursuant to Commission rules.

The following Order amends the Protective Order issued March 19, 1992. Changes or modifications appear interlined or underlined in capital letters on pages 5, 6, 9, 12 and 13 and relate to expanded possible use of the Confidential Information in MPC Docket No. 90.6.39.

PROTECTIVE ORDER

On March 9, 1992 the Montana Public Service Commission ("Commission") received a Motion for Protective Order from PacifiCorp, an Oregon corporation with electric utility

operations in Montana regulated by the Commission. The Commission Staff has recently been engaged in conducting an audit of PacifiCorp (or "the Company") and as a part of that audit recently submitted audit requests relating to a project in the Company's Southern Oregon and Northern California service territories. This project involves installation of Fiber Optic Ground Wire ("FOG Wire") to existing PacifiCorp transmission facilities. Participating with the Company in the FOG Wire project is MCI Telecommunication Corporation ("MCI"). Staff recently submitted interrogatories/audit requests to PacifiCorp related to the FOG Wire project that requires submission of, among other things, compensation data, copies of all contracts or other written agreements and a detailed narrative explaining all important aspects of the project. MCI and PacifiCorp deem much of the data sought by Staff to be trade secrets, commercially sensitive information that should not be disclosed to competitors or the public generally. The Company seeks a standard Protective Order from the Commission to protect all data furnished in the audit if alleged to be a trade secret or otherwise confidential information, subject to the usual right to challenge confidentiality provided in standard Commission Protective Orders (see, e.g., Order No. 5538a, Docket No. 90.11.78).

NOW THEREFORE IT IS ORDERED that PacifiCorp's Motion to Issue Protective Order is granted. The following order governs all data or information submitted in the course of the audit of PacifiCorp claimed to be a trade secret or otherwise confidential and shall be in effect throughout the audit process and thereafter, unless and until the Company has announced that the information need not remain under the cover of this Order or upon successful challenge to its confidentiality.

1. (a) Confidential Information. All documents, data, information, studies and other materials furnished pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, or pursuant to Commission order, that are claimed to be of a trade secret, privileged or confidential nature shall be furnished pursuant to the terms of this Order. All persons accorded access pursuant to this Order shall treat the information as constituting trade secret, confidential or privileged commercial and financial information ("Confidential Information"), and shall neither use nor disclose the Confidential Information other than for the purpose of this proceeding OR MONTANA POWER COMPANY DOCKET NO. 90.6.39, and solely in accordance with this Order. All

Confidential Information shall be so marked by PacifiCorp by stamping the same with a designation indicating its trade secret, proprietary or confidential nature and shall be submitted to the Commission on yellow paper for easy identification for filing purposes.

- (b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information made available pursuant to this Order shall be given solely to REQUESTING counsel for ~~the~~ parties TO THIS PROCEEDING OR MONTANA POWER COMPANY DOCKET NO. 90.6.39, and shall not be used or disclosed except for purposes of ~~this~~ SUCH proceeding~~S~~. Access to any specific Confidential Information, however, may be authorized by said counsel, solely for the purpose of ~~this~~ THESE proceeding~~S~~, to those persons indicated by the parties as being their experts in ~~this~~ THESE matter~~S~~. Any such expert may not be an officer, director or employee (except legal counsel) of the parties, or an officer, director, employee or stockholder or member of an association or corporation of which any party is a member, subsidiary or affiliate. Any member of the Public Service Commission and any member of its staff, the Consumer Counsel and any member of his staff, and staff members of intervenor State agencies may have access to any Confidential Information made available pursuant to this Order and shall be bound by the terms of this Order.
- (c) Nondisclosure Agreement. Prior to giving access to Confidential Information to any authorized counsel or expert, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such person. Before disclosure, such person and the counsel shall agree in writing to comply with and be bound by this Order. Confidential Information shall not be disclosed to any person who has not signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also sign an Exhibit "A." The nondisclosure agreement (Ex hibit "A") shall require the persons to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the company and a copy delivered to the Commission.
- (d) Delivery of Documentation. Where feasible, Confidential Information will be marked as such and delivered to counsel. In the alternative, the Confidential Information may be made available for inspection and be reviewed by counsel and experts as defined in paragraph 1 herein in a place and a time mutually agreed on by the parties, or as directed by the Public Service Commission.

2. Challenge to Confidentiality.

- (a) This Order establishes a procedure to expedite handling of information claimed to be confidential; it shall not be construed as an agreement or ruling on the confidentiality of any such document.
- (b) If the parties hereto cannot agree that certain documents, data, information, studies or other matters constitute trade secret, confidential or privileged commercial and financial information, the objecting party shall submit the objection(s) to the Commission for review pursuant to this Order. When the Commission rules on whether any documents, data, information, studies or other matters submitted for review and determination are Confidential Information, the Commission will enter an order resolving the issue.
- (c) Any party at any time upon ten (10) days prior notice may move or petition the Commission to remove from protection of this order and/or the sealed record specified documents designated as Confidential Information or otherwise accepted into the sealed record and to place these documents into the public record. A hearing examiner and/or the Commission shall determine a challenge of Confidential Information after proceedings in camera in which only those persons accorded access to the Confidential Information may be present. The record of such in camera hearings shall be marked CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER." It shall be transcribed only upon agreement by the parties or Order of the Hearing Examiner or the Commission. This transcription shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order. Parties may agree to release the transcription from the restrictions of this Order, or after notice and hearing, the Hearing Examiner or the Commission may issue an order making the transcription public. If the Commission issues an order removing any information from protection under this Order, the affected party may request nondisclosure and/or nonuse in the public record for five (5) business days, to enable the affected party to seek a stay or other relief. The Commission shall grant such a request, and parties shall not publicly disclose or use this information during this time period.

- 3. (a) Receipt into Evidence. Evidence of Confidential Information in this proceeding OR MONTANA POWER COMPANY DOCKET NO. 90.6.39 shall be received under seal. At least ten (10) days before use of any Confidential Information as evidence, the party intending to use such Information shall notify the providing party. The requesting party and the providing party shall make a good faith effort to reach an agreement so the information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing party shall separately identify, within five (5) business days, which portions, if any, of the documents containing Confidential Information to be offered or

referenced on the record shall be placed in the sealed record. Only one (1) copy of documents designated by the providing party to be placed in the sealed record shall be made and only for that purpose. Otherwise, parties shall make only general references to Confidential Information in these proceedings.

- (b) Seal. While in the custody of the Commission, materials subject to this Order shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER," and due to their trade secret nature, they shall not be considered as records in the possession or retained by the Commission within the meaning of the open meetings or public records statutes.
- (c) In Camera Hearing. Any Confidential Information which must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the Information under this Order. Similarly, cross-examination on or substantive reference to Confidential Information, as well as that portion of the record containing references thereto, shall be marked and treated as provided herein.
- (d) Appeal. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as designated herein for the information and use of the Court.
- (e) Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for PP&L within 30 days after final settlement or conclusion of this matter including administrative or judicial review.

4. Use in Pleadings, Briefs, etc. Where reference to Confidential Information in the sealed record is required in pleadings, cross-examination, briefs, argument or motions, it shall be by citation or title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Examiner or the Commission under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." All the protections afforded in this Order apply to materials prepared and distributed under this paragraph.

- 5. (a) Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general or conclusionary form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If necessary for a determination in this

proceeding OR IN DOCKET NO. 90.6.39 to discuss Confidential Information other than in a general or conclusionary form, it shall be placed in a separate section of the Order or Decision under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A."

- (b) Summary for Record. If deemed necessary by the Commission, PacifiCorp shall prepare a written summary of the Confidential Information referred to in the Decision or Order to be placed on the public record.

6. Segregation of Files. All Confidential Information filed with the Commission will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties or, after notice to the parties and hearing, pursuant to the Order of the Commission and/or final order of a Court having jurisdiction. All written Confidential Information coming into the possession of the Consumer Counsel under this order may be retained by him in his office files, but shall be withheld from inspection by others, except for his staff and his counsel, unless released by the Public Service Commission and/or a final order of a court under this paragraph 6 and subject always to the terms of paragraph 7 of this Order.

7. Preservation of Confidentiality. All persons entitled to obtain any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than preparation for and conduct of this proceeding OR MONTANA POWER COMPANY DOCKET NO. 90.6.39, and then solely as provided herein, and shall take reasonable precautions to keep the Confidential Information secure, pursuant to this Order.

8. Reservation of Rights. The parties affected by the terms of this Protective Order further retain the right to question, challenge, and object to the admissibility of data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information or cross-examination on the grounds of relevancy or materiality.

This Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal any such determination of the Commission or such assertion by a party.

9. Amendment or Modification. The Commission retains jurisdiction of this matter and may alter or amend these provisions as it deems appropriate, upon motion by an appropriate party and reasonable notice.

Done and Dated this 4th day of May, 1992 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Chairman

WALLACE W. "WALLY" MERCER, Vice Chairman

BOB ANDERSON, Commissioner

TED C. MACY, Commissioner

ATTEST:

Commission Secretary

(SEAL)

EXHIBIT "A"

I have reviewed the Protective Order Nos. 5612 and 5612a (amending 5612 to extent of possible use in MPC Docket No. 90.6.39), issued March 19, 1992 and May 13, 1992 respectively, and agree to be bound by the terms and conditions of these orders.

Signature

Typed or Printed Name

Residence Address

Employer or Firm

Business Address

Party

Date